IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 9532 of 1998

Between:

1. P.Somasekhara Rao,(Died),

S/o.Late Suryaprakasa Rao,
Bellampalli, Adilabad District.

2. P.Renuka Devi, W/o.P.Somasekhar Rao,
Bellampally, Adilabad District.

3. P.S.Prakash Rao, S/o.P.Somasekhara Rao,
Bellampally, Adilabad District.

....PETITIONERS

AND

1. The Special Commissioner (L.R),

Government of A.P., Hyderabad,
and 4 others.

...RESPONDENTS

* * *

ORDER:

Subsequent to filing of the writ petition, the sole writ petitioner died, and so, his legal representatives were brought on record.

2. The case of the petitioners is that though 1st petitioner was assigned 7,246 square yards in S.No.170-PP on payment of market value, the Revenue Divisional Officer, Manchiryal (3rd respondent) irregularly cancelled the said assignment, and that the Special Commissioner (Land Revenue) i.e., first respondent, erroneously confirmed the order of the 3rd respondent. They are questioning the order of cancellation on the following grounds:

1. The assignment was cancelled at the instance of the 5th respondent, though there, in fact, is no need for cancellation of the assignment as that land is not required for any other purpose;

2. G.O.Ms.No.361 (Revenue) dated 15.4.1989 (hereinafter referred to as G.O.Ms.No.361) relied on by the 3rd respondent in his order cancelling the assignment which contemplates assignment of land to an extent of 50 square yards free of cost does not prohibit alienation of area in excess of 50 square yards on payment of market value;

(3) 3rd respondent while passing the order of cancellation did not act independently and fairly as he was acting at the instance of his superior i.e., the Collector (2nd respondent) and did not afford a proper opportunity of being heard, as he felt bound by the directions of the 2nd respondent and did not cause personal service of notice on the first petitioner;

3. The contention of the learned Assistant Government Pleader is that since the 3rd and 1st respondents have, through speaking orders, cancelled the assignment made in favour of the 1st petitioner, petitioners are not entitled to any relief.

4. The contention of the learned counsel for the 5th respondent is that inasmuch as 1st petitioner is not eligible for assignment, of any land under any of the G.Os or the B.S.O, orders of cancellation of the assignment made in his favour passed by the 3rd respondent and confirmed by the 1st respondent are unassailable.

5. On my direction the learned Assistant Government Pleader produced the concerned file and I have perused the same.

6. I do not find force in the contention of the petitioners that first petitioner was not afforded a proper opportunity of being heard and that there was no personal service of notice on him, because if any of those contentions is really true, 1st petitioner would have taken such a plea in the revision preferred by him to the first respondent against the order of the 3rd respondent. Ground No.4 of the grounds of revision filed by the 1st petitioner before the 1st respondent reads

> " The lower court has not thought of independently and it has totally depended on the order of the R.D.O., Mancheryal, and as such the lower court has not given any ample opportunity to argue the matter also, which amounts to show the pre-thought of the lower court."

So it is clear that the grievance of the 1st petitioner was "want of ample opportunity", but not "lack of opportunity". Therefore, it is clear that first petitioner, in fact, was afforded an opportunity. Granting of 'ample opportunity' is not one of the principles of natural justice as they contemplate parties being afforded an opportunity of being heard, but not ample opportunity. So even assuming that 1st petitioner was not afforded an 'ample opportunity' it cannot be a ground for interfering with the order of the 3rd respondent.

7. Similarly, the contention relating to lack of notice cannot be accepted because in his affidavit filed in support of this petition, 1st petitioner stated as follows in the second para 2(d)(may be a mistake for para 2(e)) as follows:

> " I state and submit that consequent to the receipt of show cause notice of the Revenue Divisional Officer, I have not submitted explanation thinking that the remedy is by way of filing appeal."

Therefore, it is clear that 1st petitioner in spite of his having notice of the proposed action the 3rd respondent failed to issue a reply. Therefore, the observation of the 3rd respondent in his order impugned that 1st petitioner failed to submit his explanation to the show cause notice, cannot be said to be incorrect. First petitioner, to whom an opportunity of submitting an explanation, failed to avail that opportunity, on a misapprehension that he has to file an appeal, has to either thank or blame himself, but cannot complain that he was not given either a notice or due opportunity.

8. The contention that inasmuch as 3rd respondent passed the order of cancellation

at the behest of the 2nd respondent, it is unsustainable, has no force, because the relevant portion in the order of the 3rd respondent confirmed by the 1st respondent reads

> " The issue of regularization of the site has been examined by this office and also by the Collector, Adilabad and found that the orders issued by the Mandal Revenue Officer, Bellampalli are irregular since he regularization of such a huge extent of Government land in favour of the well to do person."

The fact that 2nd respondent also examined the issue along with the 3rd respondent does not and cannot be construed to mean that 3rd respondent acted at the behest of the 2nd respondent. Even assuming that the 3rd respondent passed the order at the instance of 2nd respondent, since 2nd respondent is not either the appellate or revisional authority and since the 1st petitioner preferred a revision to the 1st respondent against the order of 3rd respondent, 2nd respondent's influence, if any, on the 3rd respondent in passing the order, prejudice if any caused to the 1st petitioner pales into insignificance because the order now in force is the order of 1st respondent but not that of the 3rd respondent.

9. The next point relates to G.O.Ms.No.361, not prohibiting assignment of land beyond 50 square yards at market value. Clauses 2.6 and 2.8 of the said G.O. relied on by the learned counsel for the petitioners read

2.6: The area limit for assignment of free of cost shall be 50 square yards.

2.8: Eligible encroachers should be evicted from areas in excess of the above limit held by them. In cases, where eligible encroachers cannot be evicted from the excess areas occupied by them without causing undue hardship (for example when they have already erected permanent structures), the area in excess of 50 square yards held by them shall be regularized on payment of market value and development charges subject to the requirements of the lay out approved for the colonies."

The contention of the learned counsel for 5th respondent is that since as per the said G.O. owners of houses or structures who would be put to undue hardship only are entitled to regularization of the area beyond 50 square yards on payment of market value and since the land assigned to the 1st petitioner is a vacant land, assignment

of a huge extent more than 7000 square yards of vacant land to the 1st petitioner under the said G.O. is but irregular.

10. G.O.Ms.No.361 refers to some earlier G.Os. All the said G.Os. relate to assignment of land to 'eligible encroachers'. Though those G.Os. do not define 'eligible encroachers', since Board Standing Orders (B.S.O) 15 relates to assignment of land, it can be taken aid of to understand or construe the meaning of 'eligible encroachers' B.S.O.15(3), relating to 'persons eligible for assignment' of land reads

> " Only landless and poor persons who directly engage themselves in cultivation, including Harijans, Ex-Toddy Tappers, backward communities and weavers shall be eligible for assignment. Ex-Servicemen, Serving Soldiers (jawans), Political Sufferers and Co-operative Societies consisting of entirely landless poor persons shall also be eligible for assignment according to the special procedure prescribed in paragraph 11."

So it is clear that only landless and poor persons are eligible for assignment of the land under the said G.O.Ms.No.361. Since it is not the case of the petitioner that he is either a landless or a poor person, he cannot be said to be a person eligible for assignment. In fact, a careful reading of G.O.Ms.Nos.361 and the other G.Os. referred to therein show that they are issued to aid the poor and depressed but not to aid the rich and affluent persons in the society. For that reason and for the reason that clause 2.8 of G.O.Ms.No.361 extracted above shows that only in cases where the encroachers cannot be evicted without causing undue hardship to them can the encroacher be assigned an extent above 50 square yards on payment of market value, even assuming that benefit of the said G.O. can be extended to rich and affluent also, since the land in question is a vacant land and is not occupied by any structures and since clause 2.8 of the said G.O. injuncts eviction of the encroachers over and above 50 square yards of land occupied by them, assignment of more than 7000 square yards of land to the 1st petitioner is not and cannot be in accordance with the letter and spirit of the said G.O.

11. The other contention relates to the 3rd respondent acting at the behest of the 5th respondent and the land assigned to the petitioner not being required for any other purpose. In our democracy bureaucracy would be in charge of the administration.

Different types of officers with different attitudes run the administration. That is the reason why people make applications and complaints etc., to bring to the notice of the concerned about the malfeasance, misfeasance and nonfeasance etc., to set in motion the concerned to rectify the mistakes committed by the subordinates. So, the fact that the file is initiated at the instance or at the behest of the 5th respondent is not and cannot be a ground for interfering with the order impugned, when it is in accordance with the law.

12. Similarly the fact that the land is not needed for any purpose immediately is also not of any consequence because in future the government can utilize it for various purposes, so the fact that there is no immediate need for the site, by itself is not a ground for holding that the assignment in favour of the 1st petitioner is proper.

13. Therefore, I find no merits in the writ petition and hence the writ petition is dismissed with costs.

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C.Y.SOMAYAJULU, J.

Date: 02nd November 2005.

BSB